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REPORT TO THE CONGRESS

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Administration Of Criteria
For The Leasing Of
Buildings To Be Constructed

B-118623

General Services Administration

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BY THE COMPTROLLER GENERAL
OF THE UNITED STATES

APRIL 19, 1972

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-118623

To the President of the Senate and the
U Speaker of the House of Representatives

This is our report on the administration of criteria by the General Services Administration for the leasing of buildings to be constructed.

Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of this report are being sent to the Director, Office of Management and Budget, and to the Administrator of General Services.

A handwritten signature in cursive script, reading "James B. Peacts", is positioned above the title of the Comptroller General.

Comptroller General
of the United States

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ABBREVIATIONS

GAO	General Accounting Office
GSA	General Services Administration
PBS	Public Buildings Service

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WHY THE REVIEW WAS MADE

The General Services Administration (GSA) is responsible for acquiring buildings for the use of Federal departments or agencies. These are either federally owned or leased. By law GSA is authorized to enter into leases, not to exceed 20 years, for buildings which are in existence or which are to be erected by the lessors for Government use. (See p. 5.)

Since 1963 the annual appropriation acts have contained restrictions requiring GSA to obtain the approval of the Public Works Committees of the Congress for the lease of buildings for use by Federal agencies, "to be erected by the lessor for such agencies at an estimated cost of construction in excess of \$200,000." (See p. 8.)

GSA, however, considers that these restrictive provisions are not applicable to the leasing of a building to be erected that is classified as being under construction if the bidder for the lease meets the following conditions: (1) it has title to or control of a building site, (2) it has a complete design of the building, (3) it has construction financing fully committed, (4) it has a building permit for the entire building, and (5) it has a firm construction contract or has started construction. (See p. 10.)

The General Accounting Office (GAO) made this review in two GSA regions to examine into GSA's administration of criteria implementing the requirements in the annual appropriation acts that prospectuses for leasing of buildings to be erected be submitted to, and approved by, the Public Works Committees of the Congress.

FINDINGS AND CONCLUSIONS

GSA concluded that congressional approval of prospectuses for the private construction and leasing to the Government of 11 buildings was not required because it classified the buildings, in accordance with the five conditions, as being under construction.

GSA leased most of the buildings for long terms at a total annual rental of about \$19 million. GSA estimates the fair market value of the buildings to be \$134 million.

Through discussions and letters GSA made known its space requirements to private developers interested in constructing buildings to be leased to

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the Government. When first approached none of the developers had met GSA's five criteria under which it classified buildings as being under construction--construction was not being undertaken as a private venture.

GSA did not issue the lease solicitations until it was satisfied that the developers had met the five conditions or actually had started construction. Before the leases were awarded, GSA took the position that the provisions in the annual appropriation acts were not applicable because the buildings had been classified as being under construction, although physical construction (foundation or structural work) had not been started on nine of the 11 buildings. (See pp. 12 to 14.)

The lease solicitations for the 11 buildings limited, in effect, participation in bidding to those developers that had complied with GSA's requirements under which it classified buildings as being under construction. Only those developers with which GSA had held prior discussions and negotiations were able to comply with the lease solicitations and were awarded the leases. (See pp. 15 and 16.)

GAO believes that the statutory restrictions and their legislative history evidence a strong congressional policy against lease construction programs. Although this policy is directed primarily against GSA, as opposed to a particular class of prospective lessors, the basic thrust of any implementation of the appropriation restrictions in the case of new construction must be to ensure that only construction already committed as a private venture is offered to the Government for rental. The underlying question which any administrative implementation of the restrictions must seek to resolve is whether there is a bona fide intention on the part of the offeror to construct the building offered for lease, irrespective of its securing a lease with GSA.

The five criteria are designed to provide objective assurance that a particular offeror intends to go forward with its building, irrespective of executing a lease with the Government--and this is their only purpose. The practical effect of meeting the criteria is to create a presumption overriding the appropriation restriction against leasing space to be erected for the Government. Compliance must be judged on the basis of the circumstances leading up to, and existing at the time of, issuance of the solicitation for offers.

GAO is of the opinion that, considering these circumstances--the advance discussions and negotiations with private developers, the absence of developers undertaking construction as private ventures when GSA first made known its space requirements, and GSA's delay in issuing lease solicitations until it was satisfied that the developers with whom discussions had been held had met the five criteria--the practices employed by GSA did not constitute an objective administrative application of the criteria implementing the appropriation act restrictions.

GAO does not object to the use of the five criteria, but GAO is not convinced that GSA's administration of the criteria provides the degree of control that

GAO believes was contemplated by the Congress in enacting the appropriation act restriction. The magnitude of the problem created by GSA's administration of the criteria leads GAO to conclude that corrective legislation is required. (See pp. 21 and 22.)

In October 1971 the Subcommittee on Public Buildings and Grounds, House Committee on Public Works, inserted a provision in legislation (H. R. 10488) which had been introduced that would supersede the provisions in the annual appropriation acts and would require congressional approval of all leases having annual rentals in excess of \$500,000. (See p. 22.) H 3104

RECOMMENDATIONS OR SUGGESTIONS

This report contains no recommendation.

AGENCY ACTIONS AND UNRESOLVED ISSUES

GSA stated that the procedures which have been employed and the leasing actions which have been taken were in accord with the provisions in the annual appropriation acts and that congressional approval of leasing of the 11 buildings was not required because the buildings qualified under its regulations as being under construction. (See p. 18.)

GSA contends that the law and Executive orders impose a mandate on GSA to satisfy the space needs of Federal agencies on a timely basis and that this mandate has been fulfilled even though there were congressional restraints on GSA's seeking authority for lease construction projects and budgetary and executive restrictions on Federal construction. (See p. 16.)

MATTERS FOR CONSIDERATION BY THE CONGRESS

GAO believes that enactment of legislation requiring congressional approval of all leases having annual rentals in excess of \$500,000 would eliminate the administrative problem of implementing the restrictions in the appropriation acts against leasing buildings to be erected for the Government and would strengthen congressional control over GSA's leasing program.

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CHAPTER 1

INTRODUCTION

The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 490), and Executive orders issued pursuant to the act direct the Administrator of General Services to initiate and maintain plans and programs for the effective and efficient acquisition of federally owned and leased buildings. The act specifically authorizes the Administrator to enter into leases, not to exceed 20 years, for the accommodation of Federal agencies in buildings which are in existence or which are to be erected by the lessors for such purposes.

The General Services Administration has developed nationwide policies, regulations, and standards governing the acquisition, assignment, and utilization of Government owned and leased buildings. Space management operations are carried out by the Public Buildings Service (PBS) in the 10 GSA regional offices under the policy and procedural direction from the GSA Central Office in Washington, D.C.

Our review was directed toward ascertaining the extent of GSA's compliance with the provisions of the annual appropriation acts that require approval from the Senate and House Public Works Committees of the Congress of lease actions involving new construction.

GSA POLICY ON CONSTRUCTION OF PUBLIC BUILDINGS AND ACQUISITION OF SPACE

GSA's policy provides for the construction and alteration of Federal facilities at a rate that will reduce the total amount of rental space, will provide for Federal operations to be housed in Government-owned space, and will replace Government-owned facilities becoming obsolete with modern functional structures that meet present-day requirements for efficient and economical operations. The policy provides also for leasing buildings when requirements in a community are insufficient to warrant construction of a public building or when the completion of a new building within a reasonable period of time cannot be ensured.

TRENDS IN GOVERNMENT OWNED
AND LEASED SPACE

Government owned and leased space under GSA control has increased steadily during recent years, as illustrated for the 5-year period ended June 30, 1970, in the following table.

<u>Fiscal</u> <u>year</u>	<u>Government-</u> <u>owned space</u>	<u>Government-</u> <u>leased</u> <u>space</u>	<u>Total</u>	<u>Appropri-</u> <u>ated for</u> <u>GSA con-</u> <u>struction</u>	<u>Annual</u> <u>rental</u>
	(millions of square feet)			(millions)	
1966	149.8	44.6	194.4	\$132.3	\$131.2
1967	155.5	46.4	201.9	114.0	140.1
1968	160.4	48.2	208.6	63.8	150.7
1969	160.6	51.0	211.6	-	163.4
1970	163.2	54.1	217.3	26.5	184.0

As shown by the table, annual rental increased by \$52.8 million and the area of leased space increased by 9.5 million square feet during the 5-year period ended June 30, 1970. Most of the increase in leased space was in the Washington metropolitan area.

BUDGETARY RESTRICTIONS ON
GSA'S CONSTRUCTION PROGRAM

The President of the United States, in his January 1968 budget message to the Congress, stated that, to hold budget totals to a minimum, a determined effort was being made to slow the pace of federally financed construction programs as much as possible, consistent with orderly government and sound practices. GSA requested no appropriation for its construction program in fiscal year 1969 and deferred construction for which about \$143 million had been appropriated.

In September 1969 the President directed a 75-percent reduction in new construction, to accommodate--without undue inflationary pressure on the construction industry--those programs having the highest social priority. This directive was rescinded in April 1971.

GSA proposed a construction budget of \$12.8 million for fiscal year 1970, but the Congress appropriated \$26.5 million. For fiscal year 1971 GSA proposed a substantially increased construction budget of \$101.7 million. The Congress, however, appropriated \$133.6 million. At the beginning of fiscal year 1972, GSA had a backlog of about 65 projects authorized by the Congress that would have required construction funding of about \$811 million.

CONGRESSIONAL CONCERN OVER GSA
PRACTICE OF LEASING FACILITIES

In June 1969 the House Committee on Appropriations expressed the belief that it was false economy to continue to defer construction of needed public buildings and urged GSA to resume a reasonable program of construction. The Committee stated that it was wasteful for the Government to continue delaying construction of needed public buildings in the face of rising construction, labor, and materials costs and of the continuing necessity of leasing substantial facilities.

In November 1969 the Senate Committee on Appropriations stated its concurrence with the House Committee. The Senate Committee expressed concern about the growing practice of leasing space and urged the Administrator to support the construction of needed public buildings as the most economical way to provide accommodations for the Federal agencies.

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CONGRESSIONAL CONSTRAINT ON
LEASING BUILDINGS TO BE ERECTED
AT COST IN EXCESS OF \$200,000

Since fiscal year 1963 the annual appropriation acts have contained provisions that no funds be used for payment of rent for a building for the accommodation of Federal agencies, "to be erected by the lessor for such agencies at an estimated cost of construction in excess of \$200,000," unless a prospectus for lease construction has been approved by the House and Senate Committees on Public Works. (See app. I.)

In the hearings on July 9, 1962, on GSA's appropriations for fiscal year 1963, the Chairman of the Subcommittee on Independent Offices of the House Committee on Appropriations stated:

"There is only one thing that troubles me, and that is the use of our lease construction authority. You are using it as a substitute for Congressional action, whereby public buildings are wholly constructed with Federal funds and they belong to the Federal Government and the people.

"*** you are figuring on building 1 million square feet here in the District of Columbia and the construction cost will be in the neighborhood of \$18 to \$25 a square foot. You are taking the entire buildings, so that the builder is relying upon your contract. Is your contract 10 years, 15 years?

"He is going to take that to his banker. We have some practical knowledge how these things work, as you gentlemen do. He is going to borrow every penny from a financial institution he can based upon your contract. He has a free ride and we know it. If there is any free riding going on, we think the taxpayers ought to have it, and certainly the taxpayers do not get it under your lease contract arrangement."

* * * * *

"*** You are giving, somebody, certainly, a 10-year payout on a building, or at most a 15-year payout on a building, and the Government will pay for it, and at the end of 10 or 15 years you have nothing. Why not let the Government build this building? This is my point."

The Committee on Appropriations stated in House report 2050, Eighty-seventh Congress, accompanying House bill 12711, subsequently enacted as the Independent Offices Appropriation Act of 1963, that:

"The General Services Administration wants to build several new buildings in the District of Columbia under a lease construction program to provide 1 million square feet of additional space. The entire space in each building is to be rented by the Government. With this procedure the Committee disagrees since they are completely financed new buildings under lease construction contracts. The Committee believes that the Government should own the buildings instead of giving somebody a ten to fifteen year payout.

"The concern of the Committee is that lease construction is clearly the most expensive method of providing Government space. Under this method the Government pays rent at \$4 to \$4.25 per square foot per year and never obtains title to the property. A limitation on use of funds for lease construction projects costing over \$200,000 has therefore been included in the bill, but it provides that projects may proceed after obtaining legislative approval in advance of a commitment in the same manner as for public building construction projects financed by direct appropriations pursuant to the Public Buildings Act of 1959." (40 U.S.C. 603, sec. 606.)

In testimony presented in hearings before the Subcommittee on Independent Offices of the House Appropriations Committee on the fiscal year 1964 appropriations, GSA requested that the restrictive provision on leasing be deleted from the appropriation bill. GSA suggested that the limitation was inconsistent with its program for the acquisition of privately owned buildings to be constructed to meet the needs of the Government. In rejecting GSA's request, the Chairman of the Subcommittee stated:

"I am afraid G.S.A. misinterpreted the language. The language was intended absolutely to forbid the leasing of that space under your jurisdiction, and requiring you to come to the proper committees for authorization. Your language is quite weak. The reason you want this deleted is that you do not want to come back to Congress every year for your funds and authorization. In that regard, you are no different from any other agency that wants backdoor authority."

As of June 30, 1971, 14 of the 21 lease construction prospectuses submitted by GSA in compliance with this provision had been approved by both the House and Senate Committees on Public Works. The Senate Committee on Public Works informed GSA on October 27, 1969, that it would not consider any more lease construction prospectuses, except in dire emergency, until 50 percent of the approved (authorized) public building projects were funded for construction. The Senate Appropriations Committee endorsed this action.

GSA'S INTERPRETATION OF CONGRESSIONAL CONSTRAINT

GSA considers that the restrictive provisions in the annual appropriation acts are not applicable to the leasing of any building that GSA classifies as being under construction on the date of issuance of the lease solicitation. Although physical construction of a building, such as site preparation, excavation, and foundation work, may not have been started, GSA classifies a building as being under construction if certain conditions specified in its regulations (see app. II) have been met, as follows:

1. Title to the site has been vested in the bidder, or the bidder possesses such control over the site as to enable starting construction.
2. The design has been completed.¹
3. Construction financing has been committed fully.
4. A building permit has been issued.
5. A construction contract has been entered into, or actual construction is in process.

We identified 29 leases in the Washington Region and two leases in the New York Region that were awarded by GSA during fiscal years 1967 through 1971 for buildings which were newly constructed and first occupied by a Federal agency. Our examination of 25 of the leases identified 11 that were for buildings containing 4.3 million square feet that GSA classified, in accordance with its regulations, as being under construction before award of the leases.

We examined the lease solicitations, negotiation records, building permits, construction contracts, appraisal reports, correspondence, and related records. We did not compare the economies of the acquisition of Government-owned buildings as opposed to the leasing of buildings. The review was made at GSA's Central Office in Washington and at GSA regional offices in New York and Washington.

¹GSA considers the design to be complete when it is possible for the offeror to obtain a building permit for the entire structure and to enter into a firm construction contract.

CHAPTER 2

ADMINISTRATION OF CRITERIA

FOR LEASING OF BUILDINGS TO BE CONSTRUCTED

Our review of 25 leases entered into by GSA in two of its regions showed that GSA had concluded that congressional approval of prospectuses for the private construction and leasing to the Government of 11 buildings was not required because it classified the buildings, in accordance with its regulations, as being under construction. GSA leased most of the buildings for long terms at a total annual rental of about \$19 million. GSA estimates the fair market value of the buildings to be \$134 million.

CLASSIFYING BUILDINGS TO BE ERECTED AS UNDER CONSTRUCTION

When its market surveys indicated that facilities were not available to meet Federal agency needs, GSA, through discussions and letters, made known its space requirements to private developers interested in constructing buildings that would be leased by the Government. When GSA made its market surveys and, in some cases, when the Federal agencies made known their requirements directly to the developers, none of the 11 developers had a building under construction or had met the five conditions (see p. 38) under which GSA classified buildings that were to be erected as being under construction and, according to GSA, as thus not subject to the legislative requirement for approval by the Public Works Committees of the Congress.

Six of the 11 private developers purchased or obtained options to purchase building sites only after being informed of the Government's need for space. When first contacted by GSA, 10 of the 11 developers had not entered into construction contracts. None of the private developers met the three other conditions--possessing building permits, building plans, and financing commitments--until they had been informed of the Government's requirements.

GSA, through correspondence and personal contact, kept informed of the developers' progress in complying with GSA's five conditions for classifying a building as being under construction. The developers submitted the following

documents as evidence of their compliance with those conditions.

1. Titles to, or options to acquire, the building sites.
2. Permits to construct the buildings.
3. Building plans.
4. Construction contracts.
5. Construction-financing commitments.

GSA did not issue solicitations to lease the 11 buildings until it had assurance that the developers had met the five conditions or actually had started construction. GSA determined before the award of the leases that the restrictive provisions in the annual appropriation acts were not applicable to the leasing of the buildings because the buildings were considered to be under construction. As shown in the following table, however, construction (foundation and structural) of nine of the 11 buildings was not started until after the leases had been awarded.

<u>Building</u>	<u>Date lease awarded</u>		<u>Date construction started</u>		<u>Date buildings accepted or scheduled for occupancy</u>
A	Dec.	1967	Jan.	1968	Dec. 1968
B	Mar. 11,	1968	Mar. 28,	1968	May and June 1969
C	Mar.	1971	July	1971	18 to 24 months after lease award.
D	Mar.	1968	Apr.	1968	May 1969
E	Dec.	1967	Apr.	1968	Dec. 1969 (first increment). Remainder of building ac- cepted in 1971.
F	Sept.	1967	Oct.	1967	June 1968
G	Nov.	1968	Dec.	1968	Jan. 1970
H	Oct.	1968	Nov.	1968	May 1969
I	Feb.	1970	Mar.	1970	Sept. 1970 (building occu- pied before completion).
J	Apr.	1968 ^a	Feb.	1968	Sept. 1969 (first increment). Entire building by May 1970.
K	Aug.	1967 ^a	June	1967	July and Aug. 1968

^aConstruction started before the award of the lease but after initiation of discussions with the lessors.

GSA appraised the fair market value of the 11 buildings to be constructed at \$134 million on the basis of drawings and specifications. The appraisal reports indicated that three of the proposed buildings were inconsistent with the growth patterns in the area in which they were to be located

and that the construction of the buildings would be feasible only if there were firm commitments to lease the buildings on long-term bases.

Details of the negotiations with the prospective developers, of the lease solicitations, and of the approval of award of the leases for five of the 11 buildings are presented in chapter 3.

PARTICIPATION IN BIDDING

By their terms the lease solicitations for the 11 buildings limited, in effect, participation in bidding to those developers that had complied with GSA's requirements under which GSA classified buildings as being under construction. In most cases bids were received from only those developers with which GSA had held prior discussions and negotiations before issuing the solicitations. As a result, GSA did not have assurance that the 11 buildings had been leased at the most economical rentals possible, although GSA stated that favorable rental rates had been obtained.

GSA entered into discussions with private developers for the construction and leasing of the 11 large buildings when its market surveys indicated that facilities were not available to meet Federal agencies' needs.

GSA either discussed its building requirements with private developers or sent them specifications outlining its space requirements; it requested the developers to present preliminary information about their construction plans and tentative rental rates. In some cases the Federal agencies held discussions with the developers before making their requirements known to GSA.

GSA awarded the 11 leases to developers with whom it previously had held discussions. Eight of 11 leases were awarded on the basis of single bids. For the remaining three leases, a total of 12 bids were received, including eight from developers that had held prior discussions with GSA.

In comparison GSA received 58 bids for the lease of 11 of the 14⁽¹⁾ buildings that had been approved for leasing by the Congress. For nine of the 11 buildings, the number of bids received ranged from three to 13. For the two remaining buildings--Reston Geological Survey Building and a

¹At the time of our review in July 1971, GSA had not awarded leases for three of the 14 buildings.

building at the World Trade Center in New York--one bid was received for each.

The Reston Geological Survey Building is to be constructed for lease to the Government under special arrangements which provide that no profit accrue to the developer and that, at the end of the 20-year lease term, the building be transferred to the Government at no cost. The lease for the building at the World Trade Center provides for the Government to recover about \$2.9 million if it does not renew the lease at the end of 20 years.

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GSA officials informed us that the 11 buildings had been leased because of (1) the expansion of the Federal work force, (2) the demolition of temporary buildings, and (3) budgetary restrictions on Federal construction. According to GSA, employees working in GSA buildings in the Washington area increased by 61,000 and required about 14 million additional square feet of space during the period covered by our review.

GSA contends that the law and Executive orders impose a mandate on GSA to satisfy the space needs of Federal agencies on a timely basis. According to GSA this mandate has been fulfilled even though there were congressional restraints on GSA's seeking authority for lease construction projects and budgetary and executive restrictions on Federal construction.

GSA also told us that no economic analyses had been made to determine whether it would have been more economical to lease or to construct the buildings prior to awarding the 11 leases. GSA officials informed us that, because of the necessity of moving many people into the space within a short period of time, the Government's construction of the buildings had not been an alternative that was considered when the decision was made to lease the buildings. These officials also stated that the space required could be met only by leasing buildings from private developers.

GSA stated that favorable rental rates had been obtained for the 11 buildings on the basis of a comparison of rental

rates with estimated fair rentals of the space leased, as shown in appraisals prepared by its professional appraisers not involved in the lease negotiations or bidding process. According to GSA the following steps were taken in an effort to develop maximum interest in, and competition for, lease awards.

1. Identification and quantification of the space needed by GSA for the agencies to be accommodated.
2. Publication of the need for accommodations and completion of a market survey to identify specific properties available for lease which could meet the Government's requirements with respect to location, amount and type of space, and delivery date.
3. Issuance of a solicitation for offers.
4. Negotiation with those persons or firms who submitted proposals.

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AGENCY COMMENTS

GSA, in commenting on a draft of this report in a letter dated February 10, 1972 (see app. IV), reiterated the foregoing comments by the GSA officials.

GSA stated that the procedures employed and the leasing actions which have been taken were in accord with the provisions in the annual appropriation acts and that congressional approval of the leasing of the 11 buildings was not required because the buildings qualified under its regulations as being under construction by owners for their own purposes and because the fixed completion dates were compatible with GSA's identified need for accommodations for Federal agencies.

At the time GSA made known its requirements to the private developers, none of the 11 developers had a building under construction or had met GSA's five conditions under which it classified buildings as being under construction. Later the developers obtained documents and plans as evidence of their compliance with GSA's five conditions. GSA, however, did not issue the solicitations to lease the buildings until it had assurance that the developers had met the five conditions or had started construction. We believe that the record clearly indicates that the developers intended to construct the 11 buildings for lease to the Government and not for other purposes. In other words, we have some doubt that the manner in which GSA assured itself that the five conditions had been met was sufficient to ensure compliance with the appropriation act provision.

GSA does not agree with our statement that by their terms the lease solicitations for the 11 buildings limited, in effect, participation in bidding to those developers that had complied with GSA's requirements under which it classified buildings as being under construction. Only those developers with which GSA had held prior discussions and negotiations were awarded the leases, however, because they were the only bidders who could comply with the solicitations.

According to GSA there can be no reasonable challenge to the rental rates obtained for the 11 buildings (cited in our report) because the average rental rate of \$4.54 a square foot was substantially lower than the average rental rate of

\$7.87 a square foot for the lease of 11 buildings that were authorized by the Public Works Committees. Also GSA stated that, for the lease of the 11 buildings cited in our report, the negotiated annual rental rate of \$4.54 a square foot was \$0.28 less than the appraised fair annual rental of \$4.82 a square foot as shown in the appraisal reports prepared by GSA professional appraisers and that this reduction in rental represented a savings of \$1.2 million a year.

GSA computations show that rental rates, including services and utilities, ranged from \$2.30 to \$14.08, or an average \$7.87 a square foot, for the 11 buildings approved by the Congress and from \$3.97 to \$7.58 a square foot, or an average \$4.54 a square foot, for the 11 buildings that GSA classified as being under construction.

The average rental rates of \$4.54 and \$7.87 a square foot are not comparable because, among other factors, there are variations in the functional designs and the locations of the buildings which would result in differences in construction and in land costs and would cause significant variations in rental rates.

The 11 buildings cited in our report contain primarily lower cost general-purpose office space constructed in accordance with private developers' plans and specifications.

Details on the types of space and rental rates for the 11 buildings approved by the Congress follow. Five buildings having an average rental of \$6.87 a square foot are special-purpose Internal Revenue Service data centers, three of which are being constructed in accordance with Government-furnished architectural plans and drawings.

Leases for two buildings--the Reston Geological Survey Building and a building at the World Trade Center in New York--having an average annual rental of \$10.92 a square foot--contain special provisions. As mentioned previously, the Reston Geological Survey Building will be transferred to the Government at no cost at the end of the 20-year lease term. The annual rental of \$3.1 million, excluding services and utilities, for the building at the World Trade Center permits the developer to recover its capital investment in 20 years. If the Government renews the lease at the end of

20 years, the annual rental will be reduced by \$2.8 million. If the lease is not renewed, the Government will recover \$2.9 million which represents one half of the developers' land costs.

Three office-type buildings are leased at an average annual rental of \$3.96 a square foot. The remaining building, which contains office and storage-type space, is leased at an annual rental of \$2.30 a square foot.

In our opinion, the variance referred to by GSA of \$0.28 a square foot between the appraised and the contract rental does not necessarily indicate that, in the absence of competition, the Government saved \$1.2 million or that the lowest possible rental rates were obtained for the 11 buildings cited in our report. Leases for eight of these buildings were awarded on the basis of single bids.

As indicated previously, however, there was extensive participation in the bidding for nine of the 11 buildings, the leasing of which was approved by the Congress--bids received for each lease ranged from three to 13. On these nine leases the average contract rental rate was \$0.81 a square foot less than the appraised fair annual rental shown in the GSA appraisal reports.

GSA stated that the five-point criteria referred to in the report was discussed in April and May of 1964 between representatives of GSA and GAO and that, at that time, GAO agreed that any building meeting the five-point criteria on or before the date of a solicitation for offers could be leased by GSA without prior authorization of the Congress.

GAO and GSA memorandums show that in May 1964 a draft of the five-point-criteria regulations was discussed orally with our representatives. The records, however, do not show that there was any discussion as to how the criteria would be applied, particularly as to the propriety of advance discussions and negotiations with the developers. As stated previously, we do not object to the use of the five criteria but we are of the opinion that the practices employed by GSA do not constitute an objective administrative application of the criteria.

CONCLUSIONS

GSA's position is that the restrictive provisions in the annual appropriation acts are not applicable to the 11 buildings because GSA classified them, before award of the leases, as being under construction in accordance with its regulations and not as buildings to be erected by the lessors for Federal agencies.

Because none of the private developers started construction of the 11 buildings until after they had been awarded the leases or had been reasonably assured that the buildings would be leased, it appears that the construction of the buildings was dependent upon the award of Government leases. Three developers which had submitted bids for one of the leases--each of which had a building considered as being under construction in accordance with GSA's criteria--took actions to have their building permits canceled when informed that the lease had been awarded to another developer. These actions indicated that the three developers intended to construct buildings for lease to the Government and not for their own purposes.

The lease solicitations for the 11 buildings limited, in effect, participation in bidding to those developers that had complied with GSA's requirements under which it classified buildings as being under construction. Only those developers with which GSA had held prior discussions and negotiations were able to comply with the lease solicitations and were awarded the leases.

We believe that the statutory restrictions and their legislative history evidence a strong congressional policy against lease construction programs. Although this policy is directed primarily against GSA, as opposed to a particular class of prospective lessors, the basic thrust of any implementation of the appropriation restrictions in the case of new construction must be to ensure that only construction already committed as a private venture is offered to the Government for rental. The underlying question which any administrative implementation of the restrictions must seek to resolve is whether there is a bona fide intention on the part of the offeror to construct the building offered for lease, irrespective of its securing a lease with GSA.

The five criteria are designed to provide objective assurance that a particular offeror intends to go forward with its building, irrespective of executing a lease with the Government--and this is their only purpose. The practical effect of meeting the criteria is to create a presumption overriding the appropriation restriction against leasing space to be erected for the Government. Compliance must be judged on the basis of the circumstances leading up to, and existing at the time of, issuance of the solicitation for offers.

We are of the opinion that, considering these circumstances--the advance discussions and negotiations with private developers, the absence of developers undertaking construction as private ventures when GSA first made known its space requirements, and GSA's delay in issuing lease solicitations until it was satisfied that the developers with whom discussions had been held had met the five criteria--the practices employed by GSA did not constitute an objective administrative application of the criteria implementing the appropriation act restrictions. In other words, we have some doubt that the manner in which GSA assured itself that the five conditions had been met was sufficient to ensure compliance with the appropriation act provision.

We do not object to the use of the five criteria, but we are not convinced that GSA's administration of the criteria provides the degree of control that was contemplated by the Congress in enacting the appropriation act restriction. The magnitude of the problem created by GSA's administration of the criteria leads us to conclude that corrective legislative action is required.

The Subcommittee on Public Buildings and Grounds, House Committee on Public Works, in October 1971 inserted a provision in legislation (H.R. 10488) that had been introduced (to change the method for financing building construction and operating costs) which would supersede the provisions in the annual appropriation acts requiring approval of the House and Senate Public Works Committees for leases for buildings to be erected. The language inserted by the Subcommittee is as follows:

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"No appropriation shall be made to lease any space at an average annual rental in excess of \$500,000 for use for public purposes if such lease has not been approved by resolutions adopted by the Committee on Public Works of the Senate and House of Representatives, respectively."

We suggested to the Subcommittee in November 1971 that the language of the foregoing provision be modified to preclude different interpretations. We suggested that the words "in a building" be inserted on the first line after "to lease any space." We also suggested that the provision be clarified to show whether the \$500,000 rental included or excluded utilities and services.

We believe that enactment of the above change in law, modified to include our suggested language changes, would eliminate the administrative problem of implementing the restrictions in the annual appropriation acts against leasing buildings to be erected for the Government and would strengthen congressional control over GSA's leasing program.

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CHAPTER 3

ILLUSTRATIVE CASES

Following are summaries of pertinent information on five of the 11 leased buildings constructed by private developers and leased by GSA to fill agency needs.

BUILDING A--APPRAISED FAIR MARKET VALUE,
\$10,000,000; ANNUAL RENTAL, \$1,500,000

In January 1967 a Federal agency informed GSA that by April 1969, or earlier, it would need 400,000 square feet of office space near its headquarters complex. After a survey of the desired area, a GSA realty officer concluded that the requirement could be met only by soliciting on the open market for the construction and lease of a building.

On April 20, 1967, GSA sent letters and specifications outlining its space requirements to five companies and requested that they provide information about their planned construction and tentative rentals.

Four of the companies replied. One indicated that it could not supply a building, and three indicated that the space requirements could be provided in buildings proposed for construction. In May 1967 GSA discussed with two companies their tentative plans, including their noncompliance with the five conditions in GSA regulations. (See app. II.)

Later one of the two companies--Company A--submitted the following documentation to evidence compliance with the five conditions.

1. An option on land dated May 31, 1967.
2. A building permit dated October 4, 1967.
3. A construction contract dated October 18, 1967, stating that construction would begin November 15, 1967, and be completed on January 1, 1970.
4. A construction-financing commitment dated November 14, 1967.

After Company A had presented evidence that it complied with GSA's five conditions, Solicitation No. GS-PBS-03-632(S), dated November 16, 1967, was issued only to Company A requesting offers for 400,000 net usable square feet of office space for a 10-year firm term with one 5-year renewal.

The solicitation stipulated that:

"Offers proposing space in a building to be constructed solely for leasing to the Government will not be considered.

"(1) For the purpose of this solicitation, buildings to be constructed do not include:"

* * * * *

"(b) New buildings, the construction status of which on the date of issuance of the solicitation, met all of the following conditions ***." [Five conditions listed in GSA's regulations]

Company A responded to the solicitation and offered to lease 510,364 gross square feet of space at an annual rental of not less than \$1,500,000, excluding metered utilities, for 10 years with options to extend the lease for two 5-year periods.

On December 12, 1967, the Washington Regional Administrator requested the Commissioner, PBS, to authorize the region to accept the offer. With respect to the applicability of the limitation in the appropriation act, the Regional Administrator stated:

"The Government's space requirements cannot be satisfied by space currently in existence. The prospective lessor has, however, submitted evidence for the construction of a building suitable for the Government's requirements in accordance with PBS P 1600.1, Chapter 2, Paragraph 9b ***. [See app. II.] By examining the documents and talking with the prospective lessor we have complete assurance that the space will be finished

in accordance with these regulations. Accordingly, the limitation contained in the Independent Offices Appropriation Act of 1967 is not applicable to the proposed lease."

On December 15, 1967, the Commissioner, PBS, approved the region's request. On the same day GSA accepted Company A's offer to lease the building for a 10-year period at an annual rental of \$1,500,000, including janitor service and maintenance but excluding metered utilities, with options to extend the lease for two 5-year periods at annual rentals of \$1,371,000 and \$1,435,000, respectively. Construction of the building was started on January 11, 1968. The building was completed, in accordance with GSA's requirements, and was accepted for occupancy on December 23, 1968.

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BUILDING B--APPRAISED FAIR MARKET VALUE,
\$6,700,00; ANNUAL RENTAL, \$907,000

In May 1967, a Federal agency requested GSA to acquire office space for consolidation of agency elements then accommodated at scattered locations in the Washington metropolitan area. As a result of this request, on July 11, 1967, GSA sent to six developers, which had expressed an interest in construction of office buildings, letters and specifications outlining GSA's space requirements and requesting information on the location of any proposed building, the number of months needed for construction, and tentative rentals based on the specifications.

GSA specified that the request was for information and planning purposes and that, should a determination be made to acquire the space, only offers meeting the five conditions in its regulations on the date of issuance of a solicitation for offers would be considered.

One developer replied about a week later. It stated that it had reviewed GSA's requirements and that it anticipated being able to comply with the five conditions by about August 15, 1967. (GSA officials were unable to provide us with any record of the replies made by the five other developers.)

To show compliance with the five conditions, the developer furnished GSA with a copy of a building permit dated November 9, 1967, and finance commitment letters. GSA's Regional Counsel questioned the documentation because there was no evidence that the financial commitments had been accepted by the developer, that obliterations in a rider to the bank's financial commitment letter indicated that the name of the prospective Federal agency (GSA) had been made known to the bank, and that the developer owned or controlled the site.

The developer submitted additional documentation which included a commitment to provide a construction loan, dated November 30, 1967, and a contract for the construction of the building, dated November 30, 1967. The construction contract provided for construction to commence on or about February 1, 1968, and to be completed for occupancy on

April 1, 1969. A credit report obtained by GSA showed that the developer owned the building site.

After the developer had satisfied GSA that it had complied with the five GSA conditions, GSA issued Solicitation No. GS-PBS-03-633(S), dated December 1, 1967, requesting offers for the lease of a facility containing 250,000 net usable square feet of space not later than April 1, 1969, to be located in an area within 6 miles of a specific location in northern Virginia that would allow for a growth potential of 500,000 additional net usable square feet in increments of 250,000 square feet.

The solicitation stipulated that offers of space in a building to be constructed solely for leasing to the Government would not be considered but specified that buildings to be constructed did not include buildings which met GSA's five conditions on the date of the issuance of the solicitation.

Of the five bidders responding to the solicitation, the developer with which the advance arrangements had been made submitted the low bid. One unsuccessful bidder complied with the conditions of the solicitation. Two unsuccessful bidders were not responsive to the solicitation--one offered space that was not in the delineated area and the other did not comply with GSA's five conditions. For the fourth unsuccessful bidder, GSA's files contained no documentation on the status of compliance with the conditions in the solicitation.

On February 23, 1968, the Washington Regional Administrator requested the Commissioner, PBS, to authorize the region to accept the developer's offer to lease space in Building B. He stated that the limitation contained in the Independent Offices Appropriation Act of 1968 was not applicable since the Government's space requirements would be satisfied by space currently under construction.

On March 8, 1968, the Commissioner approved the Regional Administrator's request. On March 11, 1968, GSA accepted the developer's offer to lease 254,331 net usable square feet of space in Building B for a term of 20 years at an annual rental of \$1,011,230, including all services and utilities for the first 10 years, and an annual rental of

\$960,334, including all utilities, for the second 10 years. The rental later was reduced to \$906,881 a year for the first 10 years and to \$857,965 a year for the second 10 years because GSA assumed responsibility for the utility services.

An official of the Department of Permits and Licenses of the city where the building site was located informed us that the city's records showed that excavation for the building was started on March 22, 1968, and that the first foundation piling was driven and approved by the city on March 28, 1968. GSA accepted the first increment of completed space in the building on May 1, 1969, and the entire building on June 27, 1969.

A GSA appraiser stated that the building represented minimum construction in a location where there would be no demand for an office structure unless a triple-A tenant (a tenant such as the U.S. Government or a large, stable organization) for a long-term lease was available.

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BUILDING C--APPRAISED FAIR MARKET VALUE,
\$14,123,000; ANNUAL RENTAL, \$2,223,000

On June 9, 1970, a Federal agency requested GSA to acquire space for one of its components which was located in a temporary building.

On August 25, 1970, the Commissioner, PBS, determined that (1) GSA would acquire a leased building in a northern Virginia city, (2) a market survey would be conducted by personally contacting private developers, and (3) adequate competition would be ensured by obtaining offers from at least three different parties offering space in the selected city. The Commissioner later reduced the number of potential offerors required from three to two.

By November 1970 GSA had contacted 12 developers whose names had been provided by city officials. At that time none of the 12 developers had existing buildings for lease or one that could be classified as being under construction in accordance with the five conditions in GSA regulations.

Of the 12 developers, three indicated that they would not construct a building, seven indicated a willingness to construct a building but stated that they would not be able to meet GSA's five conditions for from 4 to 12 months, and two indicated that they would construct a building and that they expected to be able to meet GSA's five conditions by December 1, 1970.

The two latter developers submitted documentation to evidence that, as of December 29, 1970, they had complied with GSA's conditions for classifying buildings as being under construction.

On December 31, 1970, GSA issued a solicitation to eight developers for the lease of a building containing 455,326 square feet of space in the designated city to be available 24 months after the award of a lease. The solicitation contained the legislative provision pertaining to congressional approval of buildings to be constructed but stipulated that buildings to be constructed did not include those whose construction status, on the date of the issuance of the solicitation, met the five conditions in GSA regulations.

In response to the solicitation, GSA received offers from the two developers that previously had submitted evidence as requested by GSA to show that they had complied with the five conditions. After conducting negotiations, GSA determined that the offer by one developer--designated as C--was the lower.

On March 10, 1971, the Acting Assistant Commissioner for Operating Programs recommended that the offer submitted by developer C be accepted. The Commissioner, PBS, and the Administrator concurred with the recommendation. On March 18, 1971, GSA accepted the offer of developer C to lease 478,082 net usable square feet of space in its building for 20 years at an annual rental of \$2,223,081, including operating services but excluding utilities.

GSA appraisers stated that the area of the proposed building had been developed with industrial-type buildings and concluded that it was doubtful that a prudent developer would construct an office building in the area unless a triple-A tenant wanted to lease the building for a long time.

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BUILDING D--APPRAISED FAIR MARKET VALUE,
\$1,700,000; ANNUAL RENTAL, \$240,000

In November 1966 GSA and officials of a Federal agency met to discuss a proposed delegation of authority to the agency allowing it to enter into a lease with a university for a training center. The agency's negotiations with the university indicated that it was interested in constructing a building to be leased to the agency for a training center. GSA officials declined to delegate leasing authority to the agency. GSA recommended that the agency submit a request for the facility and let GSA fill the requirements.

On December 2, 1966, the agency submitted a request to GSA for 42,000 square feet of permanent space at a specified university in New York. The agency submitted also a request for 8,000 square feet of temporary classroom space and specified that the only locations that would be considered would be at a college or university that would provide the 42,000 square feet of permanent space.

GSA conducted a survey of 21 institutions in the New York City area to identify those that would provide a facility to meet the agency's requirements. With the exception of the specified university, all the institutions advised GSA that they were unable to provide any facility for the Government.

GSA advised university officials in January 1967 of the five conditions "that must be present before an offer could be made to the Government which would not require the approval of Congress." The university agreed to furnish the required documentation.

At a meeting between GSA and the university, it was agreed that the Federal agency would work in conjunction with the university's architects in planning the new building even though the Government had not committed itself to a lease at that time.

In accordance with GSA's request, the university submitted the following documents: (1) title to the property, dated May 15, 1947, (2) a construction-financing commitment, dated December 15, 1967, (3) a building permit, dated

November 8, 1967 (building plans were submitted with the application for the building permit), and (4) a construction contract, dated November 28, 1967, providing for construction of the building to start on or about December 15, 1967.

After assurance by the university that it had met the five conditions, GSA sent a solicitation for lease of the building, dated January 9, 1968, to the university with a request that an offer be submitted within a week to lease 42,000 square feet of space to be available on January 1, 1969, for a term of 10 years with two 5-year¹ renewal options.

On January 29, 1968, the university submitted an offer to lease an entire building of 49,000 net usable square feet to be used as a regional training center for the requesting Federal agency at an annual rental of \$239,947. At that time physical construction of the building had not started.

On February 23, 1968, the Regional Administrator, New York, recommended to the Central Office that the region be authorized to accept the university's offer to lease approximately 49,000 net usable square feet of classroom and allied space in a new building to be constructed. On March 22, 1968, the Acting Commissioner, PBS, in approving the Regional Administrator's recommendation stated that the proposed lease should be modified to delete all references to a building to be constructed since the offeror's proposal complied with the five conditions in GSA's regulations.

On March 29, 1968, the New York Region notified the lessor that the offer to lease 49,000 net usable square feet of office and classroom space at an annual rental of \$239,947, including services and utilities, had been accepted. The university started construction of the building in April 1968. GSA accepted it for occupancy in May 1969.

¹The lease, as awarded, provided for a one 5-year renewal option.

BUILDING E--APPRAISED FAIR MARKET VALUE,
\$29,625,000; ANNUAL RENTAL, \$4,271,000

As a result of a request by a Federal agency for a facility in a Washington suburb, GSA on March 15, 1967, sent a letter and a general outline of space requirements to potential lessors. GSA requested certain information which it needed for information and planning purposes. Specifically GSA wanted to know how long it would take to design and construct a facility and what the rental would be in the event that GSA issued an offer to lease space within 60 to 90 days.

Four potential lessors indicated a willingness to construct buildings on sites that they owned or had options to purchase. At that time, however, none of them met the five conditions in GSA's regulations.

On July 24, 1967, an engineering firm representing Developer E informed GSA that the developer was negotiating for a building site in the area where the space was required and for the necessary loan commitments. The firm also advised GSA that preliminary plans were being prepared and that the developer had negotiated a preliminary construction contract to construct a facility meeting GSA specifications if and when GSA and the developer executed a lease contract.

On August 29, 1967, Developer E entered into a joint-venture agreement with several other persons for the purpose of constructing an office building and leasing it to the Government. This joint venture later acquired a site for the proposed building.

By October 27, 1967, the four potential lessors had submitted documentation to GSA--building permits, evidence of options or titles to the land, construction contracts, and financing-commitment letters--indicating that they had complied with the five conditions set forth in GSA's regulations. The four potential lessors, however, had not started physical construction at that time.

On October 27, 1967, GSA issued a solicitation requesting offers for the lease of a facility containing 500,000

square feet of space in a Washington suburb within 4 miles of the requesting agency's headquarters to be available on or before December 31, 1969. The facility was to be located on a site that would permit expansion in increments of 250,000 square feet to approximately 1,000,000 square feet.

The solicitation stated that offers for space in a building to be constructed solely for leasing to the Government would not be considered and stated also that buildings to be constructed did not include those new buildings whose construction status met GSA's five conditions on the date of the solicitation.

GSA received five offers. GSA concluded that all but one had met the conditions of the solicitation. The offer by Developer E was the lowest. On December 13, 1967, the Washington Regional Administrator requested authority from the Commissioner, PBS, to accept the offer. He stated that Developer E had submitted evidence of the construction of a building that met GSA's five conditions specified in its regulations and that the limitation contained in the Independent Offices Appropriation Act was not applicable to the proposed lease. The Commissioner, PBS, approved the request.

By letter dated December 15, 1967, GSA accepted the offer by Developer E to lease 525,000 square feet of space for a firm term of 20 years at an annual rental of \$2,151,250, including all services and utilities, for the first 10 years and of \$1,901,250, including all services and utilities except janitorial services, for the second 10 years.

On June 14, 1968, the region exercised an option to lease 500,000 additional square feet at an annual rental of \$2,120,000 for the first 10 years and of \$1,870,000 for the second 10 years.

After a lease was awarded to Developer E, the three remaining qualified bidders took actions to cancel their building permits and did not construct the buildings that they had offered to GSA for lease.

Construction of Building E started in April 1968, and the requesting agency occupied about 887,500 square feet of space between December 1969 and March 1970. Delivery of

the remaining 137,500 square feet was scheduled for June 1971.

A GSA appraiser stated before Building E was constructed that the building represented minimum construction in a location where there would be no demand for an office structure, such as that being constructed, unless a triple-A tenant (a tenant such as the U.S. Government) was available for a long-term lease. He added that the other improvements in the area of the proposed construction were one- and two-story buildings devoted to light industrial or research uses and that an office building was definitely not in harmony with the balance of the development.

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GENERAL PROVISION CONTAINED IN
INDEPENDENT OFFICES APPROPRIATION ACTS
SINCE 1963
LIMITING LEASE ACTIONS INVOLVING NEW CONSTRUCTION

"No part of any appropriation contained in this Act shall be used for the payment of rental on lease agreements for the accommodation of Federal agencies in buildings and improvements which are to be erected by the lessor for such agencies at an estimated cost of construction in excess of \$200,000 or for the payment of the salary of any person who executes such a lease agreement: Pro-vided, that the foregoing proviso shall not be applicable to projects for which a prospectus for the lease construction of space has been submitted to and approved by the appropriate Committees of the Congress in the same manner as for public buildings construction projects pursuant to the Public Buildings Act of 1959." [See GAO note.]

GAO note: Beginning with the appropriation act for fiscal year 1969, the provision states:

"*** Provided, that the foregoing proviso shall not be applicable to projects for which a prospectus for the lease construction of space has been submitted to the Congress and approval made in the same manner as for the public buildings construction projects pursuant to the Public Buildings Act of 1959."

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APPENDIX II

GENERAL SERVICES ADMINISTRATION

REGULATIONS IMPLEMENTING THE PROVISION

IN THE INDEPENDENT OFFICES APPROPRIATION ACTS

LIMITING LEASE ACTIONS INVOLVING NEW CONSTRUCTION

(1) With respect to the applicability of the provision cited in the Independent Offices Appropriation Acts, buildings, extensions, or additions "which are to be erected by the lessor" do not include:

(a) Buildings, extensions or additions the construction of which is substantially completed prior to date invitation for bids or the solicitation for offers is placed on the market.

(b) New buildings, or extensions of and additions to existing buildings the construction status of which, on the date of the issuance of the invitation for bids or on the date offers were solicited, met all of the following conditions:

i. Title to the site was vested in the bidder or the bidder possessed such other interest in the dominion and control over the site to enable starting construction;

ii. Design was complete;

iii. Construction financing fully committed;

iv. A building permit for construction of the entire building, extension or addition had been issued;

v. Actual construction is currently in progress or a firm construction contract with a fixed completion date has been entered into.

(2) The provision applies to portions of buildings, extensions and additions proposed for occupancy by the Government, which are to be erected by the lessor where the prorated cost of construction exceeds \$200,000.

(3) The provision does not apply to the lease of a building already in existence, but which requires extensive repairs, alterations, improvements or remodeling prior to occupancy by Federal agencies.

(4) In arriving at the estimated cost of construction, consideration shall be given to site, design, construction supervision and actual construction costs.

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APPENDIX III

LEASE CONSTRUCTION TRANSACTIONS INCLUDED IN GAO REVIEW

<u>Building</u>	<u>Firm lease term</u>	<u>Net square feet</u>	<u>Annual rental</u>	<u>GSA appraised fair market value</u>
A	10 ^a	400,000	\$ 1,500,000	\$ 10,000,000
B	20	252,187	906,881	6,700,000
C	20	478,082	2,223,081	14,123,306
D	10 ^b	49,000	239,947	1,700,000
E	20	1,025,000 ^c	4,271,250	29,625,000
F	10 ^a	241,802	863,119	5,100,000
G	15 ^a	372,970	1,891,339	10,100,000
H	20	25,035	180,924	1,300,000
I	20	353,600	1,555,840	13,500,000
J	20	1,069,100	4,884,775	39,877,000
K	5	<u>77,967</u>	<u>253,393</u>	<u>2,200,000</u>
		<u>4,344,743</u>	<u>\$18,770,549</u>	<u>\$134,225,306</u>

^aTwo renewal options for 5 years each.

^bOne renewal option for 5 years.

^cGSA's lease commitment was for 1,025,000 square feet. As of December 31, 1971, GSA had accepted 912,974 square feet for occupancy.

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UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, D.C. 20405



FEB 10 1972

Honorable Elmer B. Staats
Comptroller General of the United States
General Accounting Office
Washington, DC 20548

Dear Mr. Staats:

We appreciate the opportunity to review and comment on the draft report to Congress titled "Congressional Approval not Obtained for Lease of Buildings to be Constructed," which your office sent me on December 3, 1971.

The report has been carefully examined and we reiterate the agency comments which appear on pages 18 and 19 except for the last sentence in paragraph 1, page 19, which is not wholly consistent with our position. That sentence should be changed to read "they also stated that the space required could be met only by leasing buildings from private developers."

At the outset, it must be pointed out that the report is premised upon the position that congressional committee approval is required for a lease of space in a building "to be erected" without giving consideration to the full extent of our broad statutory authority and the limited effect on this authority of the language of the annual Appropriation Act from which the three quoted words are lifted.

Section 210(h)(1) of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 490) authorizes leasing of space ". . . necessary for the accommodation of Federal agencies in buildings and improvements which are in existence or to be erected by the lessor for such purposes . . ."

The only limitation on this broad authority is the caveat of the annual Appropriation Acts requiring congressional committee approval and this is very clearly limited to approval of leases for the accommodation of Federal agencies in buildings which are ". . . to be erected by the lessor for such agencies . . ."

Except to the limited extent above noted, there has never been an indication of an intent to inhibit the normal discharge of our responsibilities for satisfying the increasing and frequently urgent space needs for agencies. Indeed, total oversight of our leasing program would impose tremendous administrative burdens and problems.

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APPENDIX IV

Normally space is sought in existing buildings. Must it be totally ready for immediate occupancy? We think not. A building under construction by an owner for his own purposes, including speculation, with a fixed completion date compatible with our requirements is certainly considered as being in existence. As long as the space availability date is compatible, the percentage of completion (extent of construction) should be immaterial. It logically follows, applying the factors of compatibility of availability dates and the building being intended for the owner's purpose, that this building construction in the physical sense need not have begun in order to be considered as being in existence. In this regard, GSA developed criteria which have been employed for a number of years, for determining that a building can be considered to be in existence for these purposes. We regard these criteria as a valid test.

The first paragraph under Findings and Conclusions states that "GSA did not obtain approval of prospectuses for the leasing of 11 buildings." We reject the conclusion that GSA was required to obtain approval of prospectuses by the congressional committees for the leasing of these 11 buildings. They all qualified under GSA regulations for leasing since they were under construction by an owner for his own purposes with fixed completion dates compatible with our identified need for accommodations for Federal agencies.

The third paragraph of the Findings and Conclusions ignores completely the well-established fact that the need of the Government for space in the National Capital Area has been widely publicized and is well known to the office building rental and management industry. In addition to annual budgets indicating increases in overall size of the Government, GSA's policy with respect to demolition of temporary buildings in the National Capital Area was also well known. Over the years, through our extensive leasing program, the character of space to be acquired for Federal agencies and the performance specifications for buildings which will fulfill Federal space needs have been given wide circulation and are well known to the construction industry and the office space rental market. Our requirements are absolutely consistent with the type of construction which characterizes modern speculative office buildings, and frequently office buildings in the National Capital Area are constructed on a speculative basis. As recent examples of this situation, there were three buildings in the Washington, D.C. Area which were completed and stood vacant for varying periods of time before they were leased by GSA or the D.C. Government.

[See GAO note, p. 45.]

We do not make advance arrangements to lease space as the draft report states on page 26. In this regard,

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the acquisition of space for the accommodation of Federal agencies involves the use of an overall procedure which was designed to identify those real estate developers and investors who have buildings which could provide space within the specified time frame in the amounts required, at reasonable and competitive prices. This procedure contemplates continuing contact with the real estate market in a given community through communications with those firms and individuals active in speculative office building construction and rental or the real estate development and brokerage business. These contacts, and related market surveys which are made on a continuing basis in the major cities, such as Washington, where GSA has extensive space holdings and expanding needs for space are achieved by a variety of means, including, as appropriate, advertising in the news media, participation in trade association seminars and meetings, and contact with parties who have expressed an interest in competing for lease contracts, as the result of inquiry or the listing of available properties with the responsible GSA office. Only by such a procedure can GSA maximize the amount of competition obtained for this type of lease.

This entire effort is directed towards maintaining an accurate knowledge of office space rental market conditions, and the development of the maximum interest in, and competition for, lease contract awards. Briefly, the entire procedure consists of the following steps:

1. Identification and quantification of the space needed by GSA to provide housing for Federal agencies.
2. Publication of the need and completion of a market survey to identify specific properties available for lease, which can meet the Government's requirements with respect to location, amount and type of space, and delivery date.
3. Issuance of a solicitation for offers to those developers and building owners or agents having space available meeting the Government's requirements.
4. Negotiation with those persons or firms who submit proposals so as to obtain the best possible offer for the Government.
5. Award of the lease contract.

We are unaware of any procurement situations where bids or offers are not required to be in accordance with the solicitation requirements. To permit otherwise would be unsupportable. To narrow the conditions in the solicitation would restrict competition and to broaden them could well result in noncompliance with the Appropriation Act restriction.

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APPENDIX IV

GSA policy and regulations are clear that at no time during the implementation of the procedure described above will commitments be made to developers or potential developers that the Government will lease space in a building if it is constructed.

On page 17, under the heading "Participation in Bidding," it is stated that the solicitations "by this term, in effect, limited participation to those developers who had complied with GSA requirements." This sentence introduces the unsupportable opinion that GSA limited competition.

The GSA procedure for acquiring space after public advertising and market survey is the best method for assuring maximum competition. The basic objective of such competition is to secure space at the most reasonable cost consistent with the location and quality of the space required for efficient agency operation. While it is true that in some instances, after seeking direct competition between two or more offerors we are unable to obtain more than one proposal, this in itself does not establish that the ultimate purpose of seeking competition, namely, securing appropriate space for Federal agencies at prices favorable to the Government is not achieved.

In this connection, competition in the office space rental market is not restricted to the direct price relationship between two or more specific buildings. Every building offered for lease is competing in the total office space rental market in the community where it is located, and the price which can be obtained for that space reflects the condition of the market at the time. In the case of the Washington region, where developers have entered into the market on a very broad speculative scale, each developer is subject to the competitive forces at work in that market. It is the policy of GSA in all lease transactions to obtain an accurate analysis of these forces and their impact on office space rental prices by securing appraisals of the individual properties being offered for lease. These appraisals, which are prepared by professional appraisers in no way connected with the negotiations for the space, establish the rental it is anticipated would be paid for the space in a competitive transaction under prevailing market conditions. Our negotiations with the developers are directed towards obtaining offers which are consistent with the rental estimate. That we have been eminently successful in injecting an effective competitive aspect into our acquisition by lease of the 11 buildings cited in your report is demonstrated by the fact that the average appraised fair annual rental for them is \$4.82 per square foot or 28 cents per square foot more than the \$4.54 rate actually negotiated. For the total footage leased, this represents a savings of approximately \$1.2 million per year. Significantly, the \$4.54 per square foot rate is substantially lower than the average for the 14 prospectus cases referenced in page 11 of your draft report. Our analysis of these latter cases, all of which were authorized by the Public Works Committees, shows an average

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rental of \$7.87 per square foot. It is clear that by these comparisons there can be no reasonable challenge to the rental rates obtained by the Government in the 11 cases cited in the report.

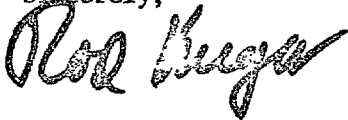
[See GAO note.]

At this point, it is essential I bring to your attention that the so-called "5-point criteria" which is referred to in your report was discussed in April and May of 1964 between representatives of GSA and GAO. At that time, GAO agreed that any building meeting the 5-point criteria on or before the date of a solicitation for offers could be leased by GSA without securing prior authorization of the Congress.

In the attachments to this letter I have set forth more details concerning the Washington regional area space market as well as specific discussion of the illustrative cases detailed in your report.

We would be pleased to discuss any of these points further with you or your staff.

Sincerely,



Rod Kreger
Acting Administrator

Enclosures

GAO note: The deleted comments relate to matters discussed in the draft report but omitted from this final report.

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APPENDIX IV

C O P Y

ANALYSIS OF ILLUSTRATIVE LEASES

General:

The Federal Property and Administrative Services Act of 1949 (40 USC 490), Reorganization Plan 18 of 1950 and Executive Order 11512 impose a mandate on GSA to satisfy the space needs of Federal agencies. This mandate means that the facilities must be provided in a timely manner, must contribute to the operational efficiency of the agencies to be housed, and of necessity will include Government-owned as well as space leased from private owners.

The 11 transactions cited in the report were executed in the fulfillment of this mandate. In addition to commenting on the four illustrative cases in Chapter 3 of the report we believe that a brief discussion of the unique space situation within the Washington Regional Office will assist you in understanding our position since 10 of the 11 buildings were located in that region.

Cases in the Washington Region:

No other urban area in the United States presents a more critical or challenging office space problem for GSA. During the six year period covered by the report, June 1965 to June 1971, personnel housed in GSA assigned space in that area increased by 61,000 and required the addition of some 14 million square feet of space.

Even though five major office buildings providing about 3 million square feet of space were completed during this time, the growth of the Federal community in the Washington Region was so great that Federal construction could not keep pace. The establishment of the Department of Transportation, Bureau of Narcotics and Dangerous Drugs, the Executive Protection Service, Law Enforcement Assistance Administration, Environmental Protection Agency are only a few of the major activities created through reorganization of the Executive Branch to implement many of the programs which were legislated into existence or expanded during this period. Concurrent with unprecedented growth there was a need to acquire space for 18,000 employees who previously occupied approximately 3.5 million square feet of temporary and obsolete buildings which were unsafe, unsightly or simply blocking the construction of other needed public improvements including Federal buildings.

It is clear that the cumulative demand for modern office space has and will continue to exceed our federally owned space inventory, current and prospective, under control of our Washington Regional Office. Our need for space in the Washington Metropolitan Area is recognized as the dominant factor in that area's office space rental market. These needs have

been widely publicized and are well known to the office building rental and management industry. As a part of this communication with the industry and the office space rental market GSA has developed written requirements which spell out the functional character of space to be acquired for Federal agencies. These requirements, or performance specifications are consistent with the type of construction that characterizes modern speculative office buildings. These written requirements have been given wide circulation and are known to the construction industry and the office space rental market.

In view of the fact that there is a continuing need by the GSA Washington Regional Office for leased space, and since the functional character of the space GSA acquires is the same as that produced in the typical, modern, speculative office building, real estate developers, and entrepreneurs have entered the market on a broad scale with buildings that are suitable for either Government or private occupancy, and it is these buildings which have been leased by GSA.

The 10 Washington Regional Office leased locations discussed in the draft report were acquired at an average annual rental rate (adjusted to include the cost of utilities and services) of \$4.54 per square foot; an analysis of 42 other major leases executed in the Washington Region during the same time period reveals an average rate of \$4.83.

There can be no reasonable challenge to the rentals incurred by the Government in these 10 leases which were executed after obtaining competition to assure the space at the lowest obtainable price.

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APPENDIX IV

Building A

Approximately 400,000 square feet of space was required as soon as possible to house an entire Bureau of 3,383 people, plus expansion, in a location near the agency's headquarters. At the time the headquarters was split between a suburban location of approximately 1,350,000 square feet of Government-owned and leased space, and a far removed downtown location of approximately 256,000 square feet of leased space in four remodeled loft-type buildings.

To meet the agency's urgent requirement and to assure maximum competition GSA contacted five firms who either owned sites in the area required or who had previously made known their plans and interest in developing additional office facilities. The magnitude of the Government's requirements for a building costing in excess of \$10 million, limits the number of firms having the organization and the financial capability of undertaking such a venture, however, we found three companies with projects in various stages of development in the required area.

The resultant lease was awarded only after the exposure of the Government's requirements to all known and qualified suppliers and the receipt of an offer meeting all of the Government's minimum requirements at an annual rental of \$1,500,000. The appraised fair annual rental of this space as estimated by a professional appraiser, not associated in any way with the negotiations, was \$1,680,000.

The delivery of 400,000 net square feet of first class office space within a period of only one year attests to the soundness of our actions and resulted not only in an extremely good real estate transaction for the Government, but enabled the occupant agency to meet its legislative programs in a timely manner and at the lowest overall cost to the Government.

No advance arrangements were made with the successful offeror nor was he pre-selected.

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Building B

Space in this building was acquired as the first increment of a long range plan to provide the occupant agency, approximately 750,000 square feet of space in three 250,000 square feet increments. Previous to this program, we had acquired in 1967 alone, approximately 300,000 square feet of space in 21 separate locations scattered through the Washington Metropolitan area. The successful acquisition of Building B enabled the agency to consolidate from 16 leased locations resulting not only in increased efficiency of operations but in the cancellation of other more costly leased space.

The solicitation for offers requested 250,000 square feet of space located within a broad area of northern Virginia and indicated that space in a single building was preferred; however, a complex was acceptable if each building had a minimum of 125,000 square feet. Both the area and space requirements were so specified in order to provide for the broadest competition consistent with the above stated space objectives.

The market survey disclosed nine interested suppliers and five having buildings in various stages of development. Formal offers were solicited from the five potential offerors. Again, the receipt of five offers for a project which required an investment in excess of \$6.7 million attests to the soundness of our procedures.

There were no advance arrangements made with any of the potential offerors, nor was the successful offeror pre-selected. The price was the lowest of the five offers and was the lowest price paid in Northern Virginia for first class office space.

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APPENDIX IV

Building C

Space in Building C was acquired to meet the operating needs of the agency and was obtained only after the agency had obtained the approval of the Armed Services Committees of the Congress. The space action was consistent with GSA's continuing program to replace temporary and obsolete buildings in the National Capital Region. Further, the temporary building to be replaced, located adjacent to the National Airport in Arlington, Virginia, is blocking a public improvement long planned by another Federal department activity.

To meet the socio-economic requirements of Executive Order 11512 and to cause the least amount of inconvenience to personnel and operations, the replacement space was required to be located in the City of Alexandria. Contacts with City officials disclosed the availability of 16 locations in the City which they desired to see developed with attention given to asthetic [sic] considerations, and the preservation of open space.

GSA contacted 12 developers to determine the status of their plans to develop the above 16 sites. Based on this survey, it was determined that at least two developers were sufficiently advanced in their building plans to provide a legally acceptable offer and we were confident that offers could be obtained at a most competitive price. Eight solicitations were issued and award was made to the lowest offer as to price. There were no advance arrangements made with any of the 12 developers contacted nor was the successful offeror pre-selected.

The effective annual rental of \$2,180,054 is less than the appraised fair rental value as established by a professional appraiser not associated in any way with the lease negotiations.

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Building D

This space requirement was not only special as to type but required a unique location offering an appropriate surroundings for a regional training center in the New York City area.

The occupant agency had previously contacted a specific university apparently with the intent to contract for the space under a delegation of authority from GSA. The delegation was not made since GSA, after reviewing all factors including our knowledge of market conditions, concluded that we were more technically qualified to provide the necessary real property advice and service.

In order to ascertain the market potential for satisfying this requirement and to obtain the broadest possible coverage, GSA conducted a market survey to locate suitable space near a university in the New York City metropolitan area. This survey disclosed that no suitable office space was available near a university, except at rentals in excess of \$6.00 per square foot plus the cost of conversion to training type space. A further survey of 21 universities showed that only one was in the process of conducting a major building program. Negotiations were conducted for space in a building under construction by that university with no price commitment or advanced arrangements made by GSA. Obviously, had the survey disclosed potentially qualified suppliers a formal solicitation for offers would also have been forwarded.

The resultant lease provides for actual costs to the lessor and no "profit". The contract rental of \$239,947 or \$4.90 per square foot was below the market and below the appraised fair rental value of \$256,000 as established by a professional appraiser not associated with the contracting office.

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APPENDIX IV

Building E

Space in this building was acquired to consolidate a major service of a Departmental activity in close proximity to its Federal complex. The initial plan included activities housed in 12 widely scattered locations throughout the Washington Metropolitan Area and was later expanded to include a total of 14 locations involving approximately 5000 people.

This space requirement was widely known and received considerable public exposure. The delineated area encompassed an area sufficiently broad to assure competition and at the same time enable the agency to maximize its operating efficiency in relation to its nearby Federal buildings. Considering the magnitude of the Government's space requirement for a building project costing approximately \$30 million, the receipt of four competitive offers assured a most economical rental. The rental rate of \$4.16 per net usable square foot included all services, utilities, and parking in accordance with local zoning and building regulations. The price was the lowest of the four offers received and was below the appraised fair rental value as established by a professional appraiser not associated with the contracting officer.

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PRINCIPAL OFFICIALS OF
THE GENERAL SERVICES ADMINISTRATION
RESPONSIBLE FOR ACTIVITIES DISCUSSED IN THIS REPORT

		<u>Tenure of office</u>	
		<u>From</u>	<u>To</u>
ADMINISTRATOR OF GENERAL SERVICES:			
Rod Kreger (acting)	Jan. 1972	Present	
Robert L. Kunzig	Mar. 1969	Jan. 1972	
Lawson B. Knott, Jr.	Nov. 1964	Feb. 1969	
Bernard L. Boutin	Nov. 1961	Nov. 1964	
COMMISSIONER, PUBLIC BUILDINGS SERVICE:			
Arthur F. Sampson	Mar. 1970	Present	
Arthur F. Sampson (acting)	Dec. 1969	Mar. 1970	
Raymond F. Myers	June 1969	Dec. 1969	
William A. Schmidt	Sept. 1966	June 1969	
William A. Schmidt (acting)	Aug. 1966	Sept. 1966	
Casper F. Hegner	Oct. 1965	Aug. 1966	
William A. Schmidt (acting)	Dec. 1964	Oct. 1965	
Robert T. Daly	Aug. 1962	Dec. 1964	

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